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EXAMINER

CHAMPAGNE, DONALD

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

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8 *Ex parte* BRIAN MARK SHUSTER
9

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11 Appeal 2009-001103
12 Application 09/837,071
13 Technology Center 3600
14

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16 Decided: September 3, 2009
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20 *Before* MURRIEL E. CRAWFORD, ANTON W. FETTING, and BIBHU R.
21 MOHANTY, *Administrative Patent Judges*.

22
23 CRAWFORD, *Administrative Patent Judge*.
24

25
26 DECISION ON APPEAL
27

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection of claims 1-6, 8-25, and 27-36. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellant invented systems and methods for aggregating information from a plurality of remote information systems, such as bulletin boards, over a wide area network, such that a reception device operating on an aggregating information system can receive message data contained on the plurality of remote information systems (Spec. 1:12-16).

Claim 1 under appeal is further illustrative of the claimed invention as follows:

1. An aggregated information system comprising:

a memory device;

a server adapted to be connected to a plurality of reception devices and a plurality of remote information systems via a wide area network, whereby said plurality of remote information systems are adapted to receive original message data and response message data from said plurality of reception devices and provide said original message data and said response message data to said plurality of reception devices; and

an aggregating application connected to said memory device and said server, said aggregating application adapted to:

retrieve said original message data and said response message data from said plurality of remote information systems;

store said original message data and said response message data in said memory device;

configure said original message data and said response message data from different ones of said plurality of remote information systems to be arranged together as aggregated message and response data relating to a topic; and

provide said aggregated message and response data to said plurality of reception devices.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Herz	US 5,754,938	May 19, 1998
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The Examiner rejected claims 1-6, 16-18, 21-25, 31-33, 35, and 36 under 35 U.S.C. § 102(b) as being anticipated by Herz; and rejected claims 8-15, 19, 20, 27-30, and 34 under 35 U.S.C. § 103(a) as being unpatentable over Herz.

We AFFIRM.

ISSUES

Did the Appellant show the Examiner erred in finding that the article/e-mail retrieval/grouping system of Herz discloses configuring said original message data and said response message data from different ones of said plurality of remote information systems to be arranged together as aggregated message and response data relating to a topic, as recited in independent claims 1 and 21?

Did the Appellant show the Examiner erred in finding that Herz discloses separate remote information systems and reception devices, as recited in independent claims 1 and 21?

Did the Appellant show the Examiner erred in finding that Herz discloses “receiving additional response message data and additional

1 original message data directly from said reception devices, and aggregating
2 the additional data with the original and response message data,” as recited
3 in dependent claims 4 and 23?

4 Did the Appellant show the Examiner erred in finding that Herz
5 discloses providing any data “to at least one of said plurality of remote
6 information systems,” as recited in dependent claims 5, 6, 24, and 25?

8 FINDINGS OF FACT

9 *Specification*

10 Appellant invented systems and methods for aggregating information
11 from a plurality of remote information systems, such as bulletin boards, over
12 a wide area network, such that a reception device operating on an
13 aggregating information system can receive message data contained on the
14 plurality of remote information systems (Spec. 1:12-16).

16 *Herz*

17 Herz discloses customized electronic identification of desirable
18 objects, such as news articles, in an electronic media environment (col. 1, ll.
19 17-19).

20 The system automatically constructs both a “target profile” for each
21 target object in the electronic media, as well as a “target profile interest
22 summary” for each user. The system then evaluates the target profiles
23 against the user’s target profile interest summaries to generate a user-
24 customized rank ordering listing of target objects most likely to be of
25 interest to each user so that the user can select from among these potentially
26 relevant target objects (col. 1, ll. 19-31; col. 55, ll. 60-65; col. 58, ll. 28-31).

1 A module uses interest feedback from users to construct a “target
2 profile interest summary” for each user, each of which corresponds to a
3 single topic of high interest for the user (col. 6, ll. 44-49).

4 There are a number of variations on the theme of developing and
5 using profiles of article retrieval, with the basic implementation of an on-line
6 news clipping service representing the preferred embodiment of the
7 invention (col. 7, ll. 45-48).

8 Articles are organized so that users can actively navigate among
9 groups of articles by moving from one group to a larger, more general group,
10 to a smaller, more specific group. This browsing provides an alternate
11 method of selecting a small subset of a large number of target objects, such
12 as articles (col. 7, ll. 27-33).

13 The method is equally useful for selecting which articles to read from
14 the electronic news groups and electronic bulletin boards, and can be used as
15 part of a system for screening and organizing electronic mail (“e-mail”) (col.
16 56, ll. 39-43).

17 Users decide for themselves which of thousands of messages they find
18 interesting from among those posted to selected virtual communities, that is,
19 made publicly available to members of those communities. They may also
20 write additional messages and post them to the virtual communities of their
21 choice (col. 73, ll. 6-11).

PRINCIPLES OF LAW

Obviousness

Where the printed matter is not functionally related to the system, the printed matter will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 703 F.2d 1381, 1385-86 (Fed Cir. 1983).

ANALYSIS

Aggregating Original Message Data and Response Message Data

We are not persuaded of error on the part of the Examiner by Appellant's argument that the article/e-mail retrieval/grouping system of Herz does not disclose configuring said original message data and said response message data from different ones of said plurality of remote information systems to be arranged together as aggregated message and response data relating to a topic, as recited in independent claims 1 and 21 (App. Br. 6-10).

The Appellant argues that Herz does not disclose "original message data and response message data" because Herz only discloses aggregating articles, which is not message data (App. Br. 6-10). However, Herz discloses that the aggregating of articles is exemplary, and that the system may also be used to aggregating e-mails, which corresponds to the recited message data (Ex. Ans. 6-8). E-mails would inherently include both original and response data.

The Appellant also argues that Herz does not disclose configuring message and response data to "be arranged together as aggregated message and response data relating to a topic," because Herz only discloses preparing lists based on similarities between a user search profile and a target profile,

1 and a profile is different than a topic (App. Br. 6-10). However, Herz
2 discloses target profile interest summaries that correspond to a single topic
3 of high interest to the user. Accordingly, Herz does disclose aggregating
4 relating to a topic.

5

6 *Separate Remote Information Systems and Reception Devices*

7 We are not persuaded of error on the part of the Examiner by
8 Appellant's argument that Herz does not disclose separate remote
9 information systems and reception devices, as recited in independent claims
10 1 and 21 (Reply Br. 2-10). Herz discloses a customized electronic
11 identification of desirable objects, such as news articles, and providing them
12 to users. The desirable objects are aggregated from a plurality of remote
13 information systems, and provided to users on reception devices separate
14 from the plurality of remote information systems.

15 The Appellant argues that Herz does not disclose aggregating e-mail
16 in the same way as aggregating articles, because electronic mail is private; it
17 is accessible only to the addresses or author. However, there is no indication
18 in Herz that e-mails are aggregating differently than articles.

19

20 *Additional Message Data*

21 We are not persuaded of error on the part of the Examiner by
22 Appellant's argument that Herz does not disclose "receiving additional
23 response message data and additional original message data directly from
24 said reception devices, and aggregating the additional data with the original
25 and response message data," as recited in dependent claims 4 and 23 (App.
26 Br. 10-13; Reply Br. 10). Herz discloses users writing additional messages

1 and posting them to the virtual communities of their choice, which are
2 located on remote information systems. The users would write such
3 additional messages from reception devices. These additional messages
4 would then be aggregated due to their posting on the remote information
5 systems.

6
7 *Providing Data*

8 We are not persuaded of error on the part of the Examiner by
9 Appellant's argument that Herz does not disclose providing any data "to at
10 least one of said plurality of remote information systems," as recited in
11 dependent claims 5, 6, 24, and 25 (App. Br. 13-14; Reply Br. 10-11). Herz
12 discloses users writing additional messages and posting them to the virtual
13 communities of their choice, which are located on remote information
14 systems. The additional messages are data provided to remote information
15 systems.

16
17 *Claims 8-15, 19, 20, 27-30, and 34*

18 We use our authority under 37 C.F.R. § 41.50(b) to enter a new
19 rejection of dependent claims 8-15, 19, 20, 27-30, and 34 under 35 U.S.C. §
20 103(a) as unpatentable over Herz. In this regard, we use a different rationale
21 than the one used by the Examiner. Specifically, dependent claims 8-15, 19,
22 20, 27-30, and 34 recite appending one of advertisement, hyper-link,
23 nomination, and voting data to the original and response message data. As
24 the advertisement, hyper-link, nomination, and voting data could be
25 subsumed within the original and response message data, and thus would not
26 functionally alter the operations of any of the remote information systems,

1 the reception devices, and the aggregator, dependent claims 8-15, 19, 20, 27-
2 30, and 34 merely recite printed matter that does not distinguish the
3 invention from the prior art in terms of patentability. *See In re Gulack*, 703
4 F.2d at 1385-86.

5
6 CONCLUSION OF LAW

7 On the record before us, Appellant has not shown that the Examiner
8 erred in rejecting claims 1-6, 8-25, and 27-36.

9
10 DECISION

11 The decision of the Examiner to reject claims 1-6, 8-25, and 27-36 is
12 affirmed.

13 We use our authority under 37 C.F.R. § 41.50(b) to enter a new
14 rationale for rejecting claim 8-15, 19, 20, 27-30, and 34 under 35 U.S.C. §
15 103(a) as unpatentable over Herz.

16 37 C.F.R. § 41.50(b) provides that, “[a] new ground of rejection
17 pursuant to this paragraph shall not be considered final for judicial review.”

18 Regarding the new ground of rejection, Appellants must, WITHIN
19 TWO MONTHS FROM THE DATE OF THE DECISION, exercise one of
20 the following options with respect to the new ground of rejection, in order to
21 avoid termination of the appeal as to the rejected claims:

22 (1) *Reopen prosecution*. Submit an appropriate amendment of the
23 claims so rejected or new evidence relating to the claims so rejected,
24 or both, and have the matter reconsidered by the examiner, in which
25 event the proceeding will be remanded to the examiner. . . . [; or]

26 (2) *Request rehearing*. Request that the proceeding be reheard under
27 § 41.52 by the Board upon the same record. . . .

1 No time period for taking any subsequent action in connection with
2 this appeal may be extended under 37 C.F.R. § 1.136(a) (2007).

3 AFFIRMED, 37 C.F.R. § 41.50(b)

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